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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 605

508 CHESTNUT, INC., a Corporation,
Appellant,

v.

THE CITY OF ST. LOUIS, a Municipal Corporation, JOSEPH T. HAYDEN, License Collector, and JOHN H. POELKER, Comptroller,
Appellees.

On Appeal from the Supreme Court of Missouri.

JURISDICTIONAL STATEMENT.

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On Appeal from the Supreme Court of Missouri.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Suprene Court of Missouri entered on April 12, 1965, reversing a judgment of the Circuit Court of the City of St. Lous, Missouri, and submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW.

The opinion of the Supreme Court of Missouri (Appendix, infra p. 11) is reported at 389 S. W. 2d 823. The decision of the Circuit Court of the City of St. Louis is not reported.

JURISDICTION.

This action was instituted by appellant in the Circuit Court of the City of St. Louis, seeking a judgment declaring invalid a City of St. Louis ordinance levying a 2% tax on the gross daily rental receipts of hotels from transient guests, and to enjoin the City of St. Louis and its officers from collecting the taxes imposed under said ordinance. The Circuit Court of the City of St. Louis entered a judgment declaring said ordinance void and enjoining its enforcement. The Supreme Court of Missouri reversed the lower court's decision, finding that said ordinance contained no Constitutional flaw (R. 59-72). Said Judgment of the Supreme Court of Missouri was entered on April 12, 1965 (Appendix, infra p. 25). A timely petition for rehearing was overruled on May 10, 1965 (R. 77). Appellant filed its notice of appeal to this Court in the Supreme Court of Missouri on July 29, 1965 (R. 79). The jurisdiction of this Court to review this decision by direct appeal is conferred by 28 U. S. C., Sec. 1257 (2). The following decisions of this Court sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: **Jamison v. Texas**, 318 U. S. 413, 414; **King Mfg. Co. v. City Council of Augusta**, 277 U. S. 100; **Poulos v. New Hampshire**, 345 U. S. 395, 402.

ORDINANCE INVOLVED.

The City of St. Louis ordinance involved, being Ordinance 52030 of the City of St. Louis, containing Section 29-108 thereof, is set forth in the Appendix, infra p. 26.

QUESTIONS PRESENTED.

(1) Whether City of St. Louis ordinance 52030, and particularly Section 29-108 thereof, which levies a tax, in addition to other taxes levied on hotels and motels, of 2% of the gross daily rental receipts due from or paid by

transient guests, but which does not levy such tax on the rental receipts due from or paid by permanent guests is discriminatory and violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(2) Whether City of St. Louis Ordinance 52030, and particularly Section 29-108 thereof, which imposes a tax on receipts from hotel and motel guests who occupy a room for thirty-one days or less, but which does not impose such tax on receipts from hotel or motel guests who occupy a room for more than thirty-one days is confiscatory and discriminatory in imposing a far greater tax on the transient business of hotels and motels than on non-transient business, and whether such ordinance discriminates against non-residents of the City of St. Louis, in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE.

Appellant instituted this action in the Circuit Court of the City of St. Louis alleging that City of St. Louis Ordinance No. 52030, and particularly Section 29-108 thereof, is invalid under pertinent Constitutional provision, and sought an injunction from the Circuit Court enjoining the enforcement of said ordinance (R. 4-37). Appellant is a corporation engaged in the operation of a hotel business in the City of St. Louis, Missouri (R. 4).

Appellant alleged that it was threatened with enforcement proceedings by the City of St. Louis and its officers unless it paid the amount of 2% of its gross rental receipts due from or paid by its transient guests (R. 5, 10).

Ordinance No. 52030 was passed on June 1, 1963 and purports to license and regulate certain business avocations, permits, professions and trades in the City of St.

Louis. Section 29-108 of said ordinance provides in pertinent part:

> "There is hereby levied a tax of two (2) per cent of the gross daily rental receipts due from or paid by transient guests, in addition to the tax levied on hotels and motels by Section 402.170, Revised Code of the City of St. Louis" (R. 30).

The ordinance defined a transient guest as a "person who occupies a room in a hotel or motel for 31 days or less" (R. 30).

Appellant alleged that Section 29-108 of said ordinance was discriminatory and violative of Amendment Fourteen to the United States Constitution, in that owners and operators of hotels and motels are deprived of the equal protection of the law since hotels and motels doing a transient business are singled out for the imposition of taxes (R. 8, 9). It was further alleged that said ordinance violated the due process of law guaranty of the Fourteenth Amendment in that it was confiscatory since it imposed a greater tax on the transient business of hotels and motels than on any other trade, business or profession in the City of St. Louis, and it discriminated against non-residents of the City of St. Louis as the burden of the tax would fall on non-residents (R. 9).

The Circuit Court of the City of St. Louis held that the ordinance was void and enjoined its enforcement (R. 49-50).

Appellees appealed from said decision to the Supreme Court of Missouri. The Supreme Court of Missouri reversed the decision of the Circuit Court and held that there was no Constitutional flaw in Section 29-108 of Ordinance 52030 (R. 72). In so ruling, the Supreme Court of Missouri recognized that appellant, in seeking to invalidate the ordinance, had contended that the ordinance violated

the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution (R. 65). The Court further recognized that the case involved the construction of the Federal Constitution (R. 65), and expressly took cognizance of the issues of whether the ordinance "is discriminatory in violation of the due process and equal protection clauses of Amendment XIV of the federal constitution" (R. 68). Appellant argued in the Supreme Court of Missouri that the most glaring defect in the ordinance is its discriminatory application among hotels and motels since the hotel or motel which does transient business will under the ordinance pay a greater tax than the hotel which does not do transient business, and the hotel with a high percentage of transient business will be required to pay a larger tax than a hotel with a lower percentage of transient business (R. 69). The Supreme Court of Missouri held that though such were the case, the ordinance was not discriminatory since the rate of taxation as applied to hotels doing a transient business and those not doing a transient business was based upon a substantial distinction, and therefore did not violate the constitutional requirements of due process of law and equal protection of the law. It was thus held that there was no constitutional impairment in the ordinance, and that the judgment of the Circuit Court voiding the ordinance be reversed (R. 72).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

The Supreme Court of Missouri has held to be constitutional an act levying a tax, in addition to other taxes levied on hotels and motels, of 2% of the gross rental receipts due from or paid by transient guests of such hotels or motels. It is submitted that this is a case of importance involving the issue of the extent to which a state may discriminate in imposing taxation without violating the due process and equal protection clauses of the Four-

teenth Amendment to the United States Constitution. It is conceded that the instant ordinance is not the only tax levied by the City of St. Louis on hotels and motels. Section 402.170, Revised Code, City of St. Louis, imposes a licensing fee of fifty cents annually for each sleeping room to be used for paying guests of hotels and motels (R. 62).

The ordinance here in question additionally levies a tax of 2% on the gross daily receipts of such portion of the rooms of hotels and motels which are occupied by transient guests. A transient guest is defined to be one who occupies a room in a hotel or motel for thirty-one days or less.

It is urged that the ordinance is so enacted that it glaringly discriminates insofar as its application to hotels and motels generally. It is clear that a hotel or motel which does a transient business (as that term is defined by the statute) will pay a far greater tax than a hotel which does no transient business. Similarly, a hotel or motel with a large percentage of transient guests will pay a substantially larger tax than a hotel with a small percentage of transient guests. Certainly the hotel or motel owner who caters mainly to transient guests is discriminated against and is not accorded the equal protection of the law, where under the ordinance he must for no reasonable purpose be forced to compete economically within the same geographical location and with a far greater tax burden than a similar business which either has no or substantially less transient guests. By the very terms of the ordinance hotels and motels which have guests who stay more than thirty-one days are exempt from the ordinance to that extent.

The Constitutional guaranty of the equal protection of the law under the Fourteenth Amendment applies to the exercise by the State of its powers of taxation. **Concordia**

Fire Insurance Co. v. People of State of Illinois, 292 U. S. 535. Though a State may without violating the Constitution impose different specific taxes upon different trades and professions, nevertheless this power is not limitless. As stated in **Allied Stores of Ohio v. Bowers**, 358 U. S. 522, 527:

> "But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'."

A similar situation was before this Court in **Royster Guano Co. v. Virginia**, 253 U. S. 412. There a State law imposed an income tax on corporations which derive business from out of the State and from within the State. The law, however, exempted the income of a corporation derived from outside the State where the corporation did no local business. This Court recognized that it does not violate the equal protection clause of the Fourteenth Amendment for a State to resort to classification for the purpose of legislation. Nevertheless, this Court ruled, the classification must be reasonable and not arbitrary. It must rest upon some ground of difference "having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." If the classification is without reason, if the classification is illusory and does not bear any relation to the purpose for which the legislation was enacted, the law in question cannot stand since it is violative of federal constitutional proscription. Thus, in **Royster Guano** this Court held that there was an arbitrary discrimination

which had the effect of denying the affected party of the equal protection of the law within the meaning of the Fourteenth Amendment, and that the legislation could not stand.

Can it be reasonably contended in the instant cause that there is a logical relationship between the purpose of the legislation and the taxation of those rooms of a hotel or motel used by a transient guest, particularly under the arbitrary definition of a transient guest in the ordinance. As conceded by the Court below, the ordinance, by exempting the hotel which has guests staying over thirty-one days, makes the incidence of the tax dependent upon a mode of operation of the same type and kind of business (R. 69-70). The Court concedes that it is true under the ordinance that a hotel with a higher percentage of transient business will pay a larger tax than one with a lower percentage of transient business, and that the hotel which does no transient business will be totally exempted from this gross receipts tax. It can not reasonably be contended that such distinction is valid. It cannot realistically be contended, as the Court below suggested, that the hotel which does a transient business has a more lucrative business. Rather, it is clear that hotels and motels which cater to permanent guests are in the same type of business as those which cater to transient guests. Certainly is this true where a single hotel caters to both permanent and transient guests. To hold otherwise is to give mere lip service to the rule that all persons "similarly circumstanced shall be treated alike". In similar circumstances the rights of all persons, and particularly the rights of all persons who must compete with each other economically, must rest on the same rule.

In **Hartford Steam Boiler Inspection & Insurance Co. v. Harrison**, 301 U. S. 459, 462, this Court held that though a State has a broad range of discretion, there is a limit

which must be maintained if the constitutional guaranty of the equal protection of the law is not to be overthrown. Thus in taxation the classification must be reasonable and not arbitrary, and a discrimination of one class cannot be supported by conjecture as to the purpose of the legislation. There a discrimination between mutual companies and stock companies insofar as whether such companies could act through agents who are their salaried employees was held violative of the equal protection clause of the Fourteenth Amendment.

The mere fact that there may be some trifling difference between the operation of a transient hotel room and a permanent hotel room is not sufficient. The distinction, to withstand constitutional scrutiny, must rest on a difference bearing a reasonable and just relationship to the act in respect to which the classification is proposed. **Louisville Gas & Electric Company v. Coleman**, 277 U. S. 32, 37.

Here there is no such relationship. Indeed the tax as imposed is calculated to fall only on non-residents of the City of St. Louis, and in reality exempts St. Louis residents since it exempts non-transient hotels and motels.

That the tax is confiscatory in some situations is patent. For example, where two hotels each gross $100,000.00 annually, but the first does no transient business while the other does all transient business, the first will owe no tax under the ordinance, and the latter will owe $2,000.00. Again, if the former does 20% transient business while the other does 80% transient business, the first will owe a mere $400.00 while the latter will owe $1600.00 in tax under the ordinance. In being thus confiscatory and discriminatory, in imposing a tax unfairly without relation to the purpose of the ordinance as it is imposed on the taxpayer, the due process and equal protection clauses of the Constitution's Fourteenth Amendment are clearly violated.

The validity of the ordinance in question under the due process and equal protection clauses of the Fourteenth Amendment was clearly raised in the Courts below. The ruling of the Missouri Supreme Court was that the ordinance was not in such respects repugnant to the Constitution. Accordingly, this Court has jurisdiction to hear this case under the provisions of 28 U. S. C. 1257 (2). We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A.

Opinion.

In the Supreme Court of Missouri

Division Number One

January Session, 1965.

508 Chestnut, Inc., a Corporation,
Respondent,

v.

The City of St. Louis, et al.,
Appellants.

No. 50,920.

Appeal From the Circuit Court of the City of St. Louis
Honorable Ivan Lee Holt, Judge.

508 Chestnut, Inc., a corporation engaged in the operation of a hotel business, brought suit against City of St. Louis and its license collector and comptroller, praying for a judgment declaring Ordinance No. 52030 void, and to enjoin defendants from enforcing same and collecting license taxes thereunder. City of St. Louis filed its answer and a cross-claim praying judgment for the amount of money due under the ordinance. Certain admissions of fact were demanded and made under Civil Rule 59.[1] Plaintiff filed a motion for summary judgment on petition and cross-claim on the ground that the pleadings and admissions showed that there was no genuine issue as to any material fact and that plaintiff as a matter of law was entitled to judgment for the relief prayed for in its petition. The motion for summary judgment was tried before a judge of the circuit court upon the pleadings, agreed statement of facts and certain documentary evidence introduced at the hearing.

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[1] All references to rules are to Rules of Civil Procedure, V. A. M. R.

On April 24, 1964 the court made and entered its findings of fact and conclusions of law; determined that the ordinance was void, that defendants were not entitled to enforce collection of taxes thereunder, and entered judgment for plaintiff and against defendants on both petition and cross-claim.

On May 6, 1964 defendants filed a motion for a new trial, which was argued, submitted to the court, and denied on June 12, 1964. On June 15, 1964 defendants filed a notice of appeal from the judgment entered on April 24, 1964.

In their jurisdictional statement defendants raise the question whether the appeal is timely. Plaintiff urges that this is a case tried to the court without a jury; that under the provisions of Civil Rule 73.01 (c) as written on May 6, 1964[2] a motion for a new trial in that kind of case had to be made within 10 days after the entry of judgment; that defendants' motion for a new trial was made 12 days thereafter—too late to extend the time for the filing of the notice of appeal—and therefore the notice of appeal, filed 52 days after entry of judgment, was filed too late to vest jurisdiction in this court. Plaintiff points out that the Court recently (on November 16, 1964) promulgated an amendment to Civil Rule 73.01 (c) to increase the time limit from 10 to 15 days, and recalls the notation made by the Court on that occasion: "The change in Rule 73.01 is made so that the time for after trial motions in nonjury cases will conform to the time now permitted for motions for new trial in jury cases."[3]

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[2] "Upon motion of a party made not later than 10 days after entry of judgment the court may amend the judgment and opinion. The motion may be made with a motion for a new trial."

[3] In jury cases applicable Civil Rule 78.02, provides: "A motion for a new trial shall be filed not later than 15 days after the entry of the judgment. The judgment shall be entered as of the day of the verdict. If a timely motion is filed the judgment is not final until disposition of the motion."

In Crooms v. Ketchum, Mo. Sup., 379 S. W. 2d 585 [3], we held in a court-tried case that the filing of a motion for new trial 12 days after the entry of judgment was timely; that such a case is governed by Civil Rule 78.02, which provides, among other things, that a motion for new trial shall be filed not later than 15 days after the entry of the judgment. Under the ruling in that case the finality of the judgment in this case was suspended until the motion was overruled within 90 days. Civil Rules 78.02 and 78.04. Notice of appeal was timely filed three days after the motion for a new trial was denied. The amendment of Civil Rule 73.01 (c) on November 16, 1964, and the notation on the order of amendment was intended to eliminate the confusion arising out of the difference between the 15 days provided for in Civil Rule 78.02 and the 10 days provided for the filing of motions to amend the judgment and opinion in court-tried cases. The amendment and notation are not to be interpreted as a construction that at that time Civil Rule 73.01 (c) provided a 10-day time limit for filing motions for new trial in court-tried cases.

The facts are undisputed. Plaintiff corporation operates the LaSalle Hotel in the City of St. Louis. It is subject to § 402-170, Revised Code, City of St. Louis, which levies on hotels a license fee of 50¢ annually for each sleeping room to be used for paying guests. Prior to the enactment of the ordinance in question, Ordinance No. 48433, levying on each hotel a license tax of 2% of the daily rental of each room occupied by a transient guest in addition to the tax levied on rooming houses in general, was declared void by the Circuit Court of the City of St. Louis. City did not appeal.

Ordinance No. 52030, § 29-108 of which is now under attack, was approved June 1, 1963. Its 1400-word title, irrelevant matter omitted, follows: "An Ordinance licens-

ing and regulating the following business avocations, permits, professions, trades, calling[s?] as follows [here 217 businesses are listed, including "Hotels and Motels"]:

"Establishing a procedure for the issuing of licenses, requiring all delinquent taxes, licenses, permits due or past due to be paid as a condition precedent to the issuance of such licenses; requiring the license collector to administer such ordinance; establishing the Board of Tax Appeals; providing and prescribing the procedure and powers of the Board of Tax Appeals; requiring bonds for certain specified licenses, and repealing [certain numbered and entitled chapters of the Revised Code], and containing a penalty clause and a severability clause."

Section 29 provides that "Every corporation • • • engaged in any business, • • • or in the keeping or maintaining of any • • • establishment, • • • [referred to?] in this ordinance, shall procure and pay for a license therefor from the city, and such license fees shall be in the respective amounts set out in this ordinance (except as otherwise provided in this ordinance)."

Each separate business, avocation, calling, etc., is dealt with in a separately numbered subsection. Some license fees are imposed in fixed amounts. For instance, express companies are required to pay a flat annual license fee of $100. Others are based on annual gross receipts, with a minimum annual fee. Provision is made for a rate of $1.75 per $1,000 where the fee is based upon annual gross receipts or other gross annual fees, charges or compensation, "except as otherwise specifically provided in this ordinance."

Subsection 29-108, "Hotels and Motels," provides as follows:

"There is hereby levied a tax of two (2) per cent of the gross daily rental receipts due from or paid by

transient guests, in addition to the tax levied on hotels and motels by Section 402-170, Revised Code of the City of St. Louis [50¢ per room per annum, see supra].

"Definitions for purposes of this section as follows:

"Transient guest shall be a person who occupies a room in a hotel or motel for 31 days or less.

"Hotel or Motel shall mean any structure or building which contains rooms furnished for the accommodations or lodging of guests, with or without meals being so provided, and kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished for pay or compensation to transient guests or permanent guests.

"It is hereby made the duty of every person, firm or corporation engaged in the business of operating a hotel or motel to file with the Comptroller of the City of St. Louis, on or before the fifteenth day of October, 1963, a sworn statement of the gross daily receipts received from or due from transient guests from the operation of such hotel or motel from the effective date of this ordinance to September 30, 1963, and to file on or before the fifteenth day of April and the fifteenth day of October of each year a sworn statement of gross daily receipts for such business for the six calendar months preceding the filing of such statement. At the time of filing such statement the Comptroller shall examine the accuracy of such statement and shall certify to the license collector of the City of St. Louis the amount of tax due by such person, firm, or corporation engaged in the business herein described. The license collector shall thereupon notify the person, firm or corporation filing such statement of the certification thereof, and it shall be the duty of such person, firm or corporation within five (5) days to pay the license collector an amount

equal to two (2) per cent of the daily gross receipts, as shown by the statement so filed and certified."

Defendants notified plaintiff of its liability to pay a tax of 2% of the gross daily rental receipts due from or paid by transient guests and that on October 15, 1963 it was required to file the sworn statement referred to in § 29-108, and threatened to bring suit for the sum due unless plaintiff complied. Plaintiffs have "gross daily rental receipts due from or paid by transient guests" as the term is defined in § 29-108.

Plaintiff's petition alleged, among other things, that § 29-108 violates Art. X, § 1; Art. VI, § 31 and Art. X, § 3, Mo. Const. 1945; the equal protection and due process clauses of Amendment XIV to the federal constitution, and § 13 of the city charter.

In its judgment of April 24, 1964 the court found § 29-108 void "because it is not uniform upon the same class of subjects and because its subject is not clearly expressed in its title."

We have jurisdiction because this case involves the construction of the state and federal constitutions. Art. III, § 23, Const. Mo. 1945.

The first issue is whether § 29-108 is void on the ground that the subject is not clearly expressed in the title.

Article IV, § 13, Charter of the City of St. Louis, provides: "Bills to contain single subject * * *. No Bill * * * shall contain more than one subject, which shall be clearly expressed in its title." This is substantially the same as Art. III, § 23, Mo. Const. 1945, which applies to bills introduced in the General Assembly. The principles which have been applied in the construction of Art. III, § 23 are fully applicable. The object of the requirement is that "the

title, like a guideboard, indicate the general contents of the bill, and contain but one general subject, which might be expressed in a few or a greater number of words." State ex rel. Normandy School District v. Small, Mo. Sup., en banc, 356 S. W. 2d 864, 868-869. The evil to be avoided is imposition upon the members of the legislature and interested people. By requiring an "honest" title—one which is not designed as a cover—the legislators will not be misled into overlooking or carelessly or unintentionally voting for vicious and incongruous legislation, and interested people will be notified of the subjects of legislation being considered in order to have an opportunity to be heard thereon, State ex rel. Normandy School District v. Small, supra, and cases cited, 356 S. W. 2d, l. c. 869. If the bill contains an exception the exception must be expressed in the title, else the section dealing with the subject matter of the exception is void. State v. Currency Services, 358 Mo. 983, 218 S. W. 2d 600, 604; Petitt v. Field, Mo. Sup., 341 S. W. 2d 106, 110. The title may be expressed in a few words, but where it descends to particulars the particulars stated become the subject of the act, which must conform to the title as expressed by the particulars. "Where the title goes into such detail as would reasonably lead to the belief that nothing was included except that which is specified then any matter not specified is not within the title. Any such matter beyond the title is void * * *." State v. Smith, 353 Mo. 807, 184 S. W. 2d 593, 596.

The title to Ordinance No. 52030 does not contravene these guiding principles. Neither the members of the board of aldermen nor any person interested in the hotel or motel business would be imposed upon, misled, deceived or surprised by the enactment of § 29-108 under this title. It is an honest title, revealing the one and only general subject of the ordinance—the licensing and regulating of specified businesses and professions, including

hotels and motels. The licensing of hotels and motels is germane to the subject. Every provision of § 29-108 is germane, that is, closely allied, fit and appropriate, and of a similar nature to the subject expressed in the title. United Bro. of Carpenters v. Industrial Com'n., Mo. Sup., 352 S. W. 2d 633, 635 [4, 5]. It is simply not true that § 29-108 is "vicious" or "incongruous" legislation, or that the title is a cover for that kind of legislation. In its reference to hotels and motels the title does not descend into particulars, and therefore its failure to include a reference to the sworn statements of receipts to be filed with the comptroller or the variance between the expiration dates of licenses granted to hotels and motels and those granted to other businesses, or other details, is not fatal to the ordinance.

We find no merit in plaintiff's argument that the ordinance is calculated to fall only upon nonresidents of St. Louis and that it exempts or excepts St. Louis residents, without expressing that exception in the title. The tax is not laid upon the guest but on the hotel or motel, and the incidence of the tax does not depend upon the residence or nonresidence of the guest but upon his status as transient or permanent. There is no **exemption** of "non-transient" hotels and motels, as contended. The ordinance applies to all hotels and motels alike. The definition of hotel or motel plainly indicates that the board of aldermen considered any place where sleeping accommodations are furnished for pay or compensation "to transient or permanent guests" as a hotel or motel. All hotels and motels, as those words are generally used and accepted, accommodate transient guests; the accommodation of transients is their principal preoccupation. Section 29-108 is a legislative recognition of this commonly[4] and judicially[5]

[4] Webster's New International Dictionary, Second Edition.

[5] Juengel v. City of Glendale, Mo. App., 164 S. W. 2d 610, 613 [2].

recognized fact, namely, that a hotel (and a motel) is a house held out to the public as a place where travelers who come will be received and entertained as guests for compensation, especially for transient persons. We think the board of aldermen, in referring to hotels and motels in the enactment of § 29-108, had in mind that while the principal service offered to the public by hotels and motels is the accommodation of persons who stay 31 days or less, some hotels and motels will or may have some permanent guests who stay for more than 31 days. The object was to tax the gross receipts from transient but not from permanent guests, so that during any computation period hotels and motels would pay the tax on the gross receipts from transient guests but if during the period some revenue was received from permanent guests, that revenue should not be taxed. This is not the same as an exemption of "non-transient hotels," and there was no necessity of referring in the title to the distinction between transient and permanent guests.

The second issue is whether § 29-108 is void on the ground that it does not fall uniformly upon the class "Hotels and Motels" and thus violates the uniformity requirement of the State Constitution,[6] and whether it is discriminatory in violation of the due process and equal protection clauses of Amendment XIV of the Federal Constitution.

It is conceded that the ordinance is a revenue measure, an exercise of the taxing power, subject to the uniformity requirement of the Constitution, and not merely a regulatory measure. The ordinance is also subject to the requirement of the City Charter, Art. XX, § 3, that a

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[6] "Taxes . . . shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Art. X. § 3. Mo. Const. 1945.

license tax imposed by any ordinance "shall be uniform for each class."

The word "uniform" as used in Art. XX, § 3 refers to the measure, gauge or rate of the tax: The words "the same class of subjects" refers to the classification of subjects of taxation for the purposes of the tax. "[W]hen the subjects are once classified the rate must be uniform upon all subjects of the same class." City of Cape Girardeau v. Fred A. Groves Motor Co., 346 Mo. 762, 142 S. W. 2d 1040, 1043 [2].

Plaintiff takes the position that the "class of subjects" under Ordinance No. 52030 is "Hotels and Motels"; that there is no subclassification into hotels doing a transient business and hotels doing a nontransient business; that the tax does not apply uniformly upon all subjects of the same class; that "hotels and motels doing transient business, all other things being equal, pay a far greater tax than those doing a non-transient business. Thus, the tax is patently not uniform upon the class 'Hotels and Motels' * * *."

We find in § 29-108 no violation of the uniformity requirements of the state constitution and city charter. The same measure, gauge or rate of tax (2% of gross daily receipts due from or paid by transient guests) is uniformly imposed upon all hotels and motels. The tax falls equally and uniformly upon all subjects of the same class and kind, that is, upon hotels and motels having daily receipts due from or paid by transient guests. If during a reporting period a hotel or motel has no transient guests there is no duty to report or pay a tax under this ordinance. There is no absolute requirement of uniformity in taxation. The only constitutional (and charter) requirement is that "the taxation of subjects which fall in the same class or category be uniform." State ex rel. Jones

v. Nolte, 350 Mo. 271, en banc, 165 S. W. 2d 632, 636 [7]. Uniformity of taxation does not require that all subjects of taxation be taxed, and does not mean universality. As far as the uniformity requirement is concerned the legislative body may lawfully tax the gross receipts from one phase of the operation of the hotel or motel business and not tax the gross receipts from another phase of the operation of that business, as long as the tax operates alike on all hotels and motels similarly situated and equally on all similar sources of revenue.

We apprehend that plaintiff's principal complaint is that § 29-108 is discriminatory. In its brief plaintiff states that "by far, the most glaring defect in the above subsection is its discriminatory application among hotels and motels" and argues that "all other things being equal, the hotel or motel that does transient business will pay a greater tax than the hotel that does not do transitory business, and the hotel with a high percentage of transient business will pay a larger tax than a hotel with a lower percentage of transient business." While Ordinance No. 52030 makes no formal subclassification of the subjects of taxation into hotels and motels doing a transient business and hotels and motels not doing a transient business, it does necessarily classify the sources of revenue received by members within the same class; it does make the incidence of the tax depend upon a difference in the method or mode of conducting the same type and kind of business. It is true that under this ordinance the hotel with a higher percentage of transient business will pay more than one with a lower percentage of transient business, and that the hotel doing a transient business will pay a gross receipts tax whereas the hotel that does none will not. Such a differentiation, however, is not invidious if the classification is reasonable and not arbitrary; if it is based upon a substantial distinction between hotels that

do and hotels that do not. Airway Drive-In Theatre Co. v. City of St. Ann, Mo. Sup., 354 S. W. 2d 858, 860 [2]. "A difference in the method of conducting a business is generally a sound basis for classification, particularly if it appears that the tax was fixed in proportion to the amount of business, which may be determined by different but reasonable methods." City of San Mateo v. Mullin, 59 Cal. App. 2d 652, 655, 139 P. 2d 351, 353. The classification of the source of revenue based upon the difference between transient and permanent guests, and the imposition of a tax upon hotels and motels that furnish rooms to paying guests for 31 days or less, is reasonable. Higher per diem prices are charged for transient occupancy; it is a more lucrative field. Stricter daily attention and supervision of the business is required; it is more exacting. It is a different type of business, which caters to a different class of trade. The issue came before the Supreme Court of Florida in Gaulden v. Kirk, Fla. Sup., en banc, 47 So. 2d 567, wherein it was resolved as we have resolved it, in this language, 47 So. 2d, l. c. 576, 577: "Certainly it was appropriate for the legislature to place the business of the landlord who rents to transients in a different class from that of the landlord who rents to permanent guests or tenants. These landlords may be in the same general class—assuredly both of them are engaged in renting living accommodations—but the distinction made between their respective businesses for the purpose of taxation under the provision of this Act is permissible classification and is not unreasonable, arbitrary or unjustly discriminatory. The landlord who rents to transients rather than permanent tenants charges higher per diem prices, must (because of the very nature of his trade or enterprise) give strict daily attention and supervision to his business and guests and operates in a special, distinct class—possibly a more lucrative field. It was necessary to establish some period of time which

would mark the difference between a transient and a permanent guest. In its wisdom the legislature saw fit to establish six months residence as the criterion. Such period of time constitutes a reasonable basis for the cleavage of the two classes of tenants and this distinction is ample justification for the difference in classification of the businesses engaged in by the landlords. Such division or classification is recognized generally throughout the business world; indeed, in the hotel and apartment trade the difference between the business of furnishing living accommodations to transients and the business of supplying living accommodations to permanent guests or tenants is well-known and accepted. Many hotels cater largely, if not exclusively, to so-called commercial or transient guests. * * * The six months basis of differentiation is reasonable and does not amount to unjust or arbitrary discrimination."

Finally, plaintiff complains that the 2% tax on the gross receipts of hotels and motels is more than 11 times greater than the gross receipts tax levied on other businesses covered by the ordinance, which imposes a tax of only $1.75 per thousand on other businesses. License fees for revenue purposes must be reasonable, but such a fee fixed by ordinance is prima facie reasonable, Ross v. City of Kansas City, Mo. Sup., 328 S. W. 2d 610, 615, and "[b]efore the courts will interfere and declare a license tax to be unjust or unreasonable, a flagrant case of excessive and oppressive abuse of power (or improper discrimination) by the municipal authorities in the levying of the license tax must be established." (Our parentheses.) 38 Am. Jur., Municipal Corporations, § 352. "What would be a fair and reasonable exaction for a license or permit as to one kind of business or activity might well be considered unfair and unreasonable as to another kind, * * *." 9 McQuillin, Municipal Corporations, 3rd Rev.

Ed., § 26.32c, p. 77. See also idem, § 26.60. Plaintiff produced no extrinsic evidence showing that the fees as applied to different businesses and occupations are unreasonable. We cannot say that unreasonableness appears on the face of the ordinance. It is not clearly apparent that the tax fixed by the board of aldermen is arbitrary, unreasonable, oppressive or prohibitive, virtually confiscatory or prohibitive of the hotel and motel business, under the rules stated in City of Washington v. Reed, 229 Mo. App. 1195, 70 S. W. 2d 121, 123, quoted with approval in Holland Furnace Co. v. City of Chaffee, Mo. App., 279 S. W. 2d 63, 67.

Finding no constitutional flaw in § 29-108 of Ordinance No. 52030, the judgment of the circuit court is reversed and the cause is remanded for the entry of a declaratory judgment consistent with this opinion.

Norwin D. Houser,
Commissioner.

Welborn, C., concurs.

Higgins, C., concurs.

Per Curiam: The foregoing opinion by Houser, C., is adopted as the opinion of the Court.

All of the Judges concur.

APPENDIX B.

Judgment.

508 Chestnut, Inc., a Corporation, Respondent,

50920

vs.

The City of St. Louis, a Municipal Corporation, Joseph T. Hayden, License Collector, John H. Poelker, Comptroller, Appellants.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of St. Louis City rendered, be reversed, annulled and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court of St. Louis City for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered; and that the said appellants recover against the said respondent, their costs and charges herein expended, and have execution therefor. Transcript $22.50 Docket Fee $10.00 Total $32.50 (Opinion filed.)

APPENDIX C.

Ordinance 52030.

(B. B. No. 3.)

An Ordinance licensing and regulating the following business avocations, permits, professions, trades, calling as follows:

Land title business; Accountants; Advertising advisers, composers, or writers; Advertising business; Adjusters; Aerial survey business; Ambulance service business; Amusement park; Amusement park business, transient included carnivals; Appraisers of real estate or personal property; Armature rewinding business; Addressing business; Installation, rebuilding leasing rental of or repair of Air conditioners business; Air Transportation ticket sales business; Asphalt and concrete paving contractors; Automobile, truck, and automotive vehicle washing business; Assayers; Rental, repair, maintenance and installation of Awnings and tent business; Automotive trade school; Automotive, truck and automotive vehicles repair garage business; Automobile, truck, trailer rental or leasing business; Automobile, truck driver instruction business; Professional bondsmen and agents; Leasing and rental of Bowling Alley Pinsetters and Pinspotters business; Beauty shops; Business of Blue Printing, photostating photographic and film developing and finishing, photocopying, duplication of all types; Business of boiler, furnace, or heating system installation, repair, cleaning, maintenance, inspecting, includes stokers, oil, gas, coal, or electrical heating systems business or chimney cleaning business; Security stock and bond brokers, security, stock and bond brokerage firms; Rental or leasing of bicycle, motor scooter, and motor cycle business, repair, maintenance; Repair, rental, maintenance, or mooring business of boats, ships, and watercraft; Bonding and Surety Com-

panies, other than Professional Bail Bondsmen; Contractors; Bookbinding Business; Bookkeeping business; Bottle exchange business; Building window and building cleaning business both interior and exterior of buildings; Building, management, operation, and maintenance business; Building or house moving, raising, shoring, wrecking business; Building and construction reporting business; Business brokers; Buyers agents and agencies; Repair, installation, maintenance, leasing or rental of business machines, equipment and office furniture; Repair, installation, and maintenance of camera and photographic equipment business; Carpet or rug cleaning business; carpenter contractors; Caterers or catering business; Cement or concrete contractors; Chair, table, or other personal property renting business; Charity solicitation business including advisors and consultants; Check cashing business; Chemists; Children's nurseries or day schools not operated by a charitable institution; Chiropodist and chiropractor; Claim agents; Clearing houses; Clinics, other than those operated by charitable institutions; Clothing or costume rental; Coin operated amusement devices; Coin operated vending machines or any devices for the sale of goods, wares or merchandise, cigarettes, cigars, food, gum and beverages; Cold storage, garment storage, fur storage, household goods storage, locker storage, grain elevator storage, merchandise storage, warehousing grain elevator and storage business; Collectors of accounts or claims other than attorneys at law; Commission or commodity merchants, agents or brokers; Rental, repair, maintenance or installation of construction and contractor's equipment business; Correspondence, trade or technical schools; Credit associations, bureaus, and agencies; Dentist; Diaper, towel, linen, overall, or uniform rental service or supply business; Repair, rental, installation, and maintenance of Dishwashing machines business; Animal Kennels; Drummer, solicitor, or canvasser; Electrical

appliances, and radio and television business; Electrical transmission equipment business; Electrologist; Electrical and electronics equipment business; Electroplating, embossing, or enameling business; Elevator and escalator business; Embalmers; Escrow Services in land transfers business; Excavating contractors; Excursion Boats; Express companies; Feather renovating business; Loan business; Fertilizing Service, Landscaping, Gardening business; Filling or Service Station Business; Fire and burglar alarm business; floor finishing, maintenance, installation or repairing business; Floor surfacing machines business, rental, leasing or repair thereof; Electrical contractor; Flourescent lighting maintenance and repairing business; Foundation contractors; Freight forwarders, freight transferring, freight warehousing business; Fumigatoring and exterminating business; Repair or maintenance of furniture refinishing business; Remodeling and tailoring of furs business; Gas appliances business; Automotive repair garage business; Gift premium or trading stamp enterprises business; Grading contractors; Guttering and spouting business; Health Institutes, Gymnasiums or reducing parlors; Hawkers and peddlers; Hoisting contractors; Home building contractors; Stables, boarding stables for horses, rental of horses, leasing of horses, horseback riding instructions; Hotels and Motels; Installation, repair, maintenance, leasing or rental of Incinerators business; Income tax or other tax returns or tax services excluding attorneys at law; Repair, maintenance, installation or rental of Industrial, professional, or technical instruments business; Information or inspection bureaus charging public for services; Installation of anything, equipment or article for compensation business; Investment companies and investment consultants and counselors; Insurance inspection bureaus; Janitor service and window cleaning business; Jewelry and watch repairing business; Labor or public relations counselors, other than

attorneys at law; Laboratories; Laboratory equipment business, repair, maintenance, installation, lease or rental; Landscaping or land clearing contractors; Lathing contractors; Repair, maintenance, rental of lawn mower business; Linotyping business; Repair, maintenance, installation and rental of locks, keys or safes business; Machines shop business, including toolmaking, sharpening, die cutting, machining and other related work; Repair, maintenance, leasing, installation or rental of Machinery of all kinds business; Machinery designing business; Magazine subscription agents and salesmen; Manicurists; Marketing research business; Mattress renovating business; Merchants or solicitors, transient; Messenger service business; Metal finishing, spraying or stamping business not included within the definition of the term of manufacturer; Microfilming business; Midwives; Millwright business; Mirror resilvering business; Money transportation business; Mothproofing business; Motor business; Motion picture producers; Motion picture distributors; Music arrangers, music bureaus; music composers, music agents, music producers; Musical instrument instruction, repair or rental of; Multigraphing companies or multilithing business; Newspapers, magazines or other periodicals or publications published within the City of St. Louis; Newspaper distributing companies; News service bureaus; Nursery schools; Office building rental business; Real Estate management business; Opticians; Orchestra or bands; Business of rental and repair of medical, surgical, hospital and nursing equipment; Optometrist; Peddlers; Paint spraying and painting contractors, interior or exterior; Paper hanging and interior decorating business; Patent right brokers or agents; Patrol, guard, or watchman service business; Pension plan service companies and business pension plan consultants; Pests exterminating business; Photocopying; Physical therapist; Piano tuning and repairing business; Pipe bending, cutting, cleaning,

and threading business; Plating business; Plastering contractor; Pneumatic tube repair and maintenance business; Plumbing, pipe and gas fitting contractors; Printers and publishers; Produce brokers; Maintenance, lease, repair, and rental of pump business; Maintenance, repair, rental or leasing of Public address systems business; Radio and television stations; Ready mix concrete business; Rental of Safe depositories, safety deposit boxes; Repairing, maintenance, remodeling and servicing of Safe business; Sales Counseling business; Sand blasting business; Schools and academies; Coal storage business, Rental, servicing, maintenance, repair and leasing of Refrigeration equipment business; Rental, servicing, repair and maintenance of Recording Equipment; Secretarial and office personnel business; Scalp treatment business; Shoe shining and valet parlors; Rental, maintenance, repair, leasing of Shoe machinery; Sewer Contractors; Sidewalk contractors; Sheet metal work contractors; Shooting galleries; Sight-seeing tours; Sign Contractors and Erectors; Skating rinks; Maintenance, leasing, repair, rental of Sewing machines business; Maintenance, rental or lease, and repair of Sprinkler system contractors; Steam fitting contractors; Rental, repair, leasing, rebuilding of Vacuum cleaner; Furniture Upholsterers; Vulcanizing and recapping tire business; Travel bureaus business; Tuckpointing business; Ushering service business; Veterinary hospitals; Veterinarian; Wallpaper cleaning companies business; Repair, maintenance, and rental of Washing machines; Waterproofing business; Operation, maintenance, repair, leasing and rental of Welding business and Welding Equipment business; Wheel alignment or brake installation and service; Wholesale produce dealers; Window display business; Window washing and building maintenance; Window shade and venetian blind business; and Wreckers of buildings and structures.

Establishing a procedure for the issuing of licenses, requiring all delinquent taxes, licenses, permits due or past due to be paid as a condition precedent to the issuance of such licenses; requiring the license collector to administer such ordinance; establishing the Board of Tax Appeals; providing and prescribing the procedure and powers of the Board of Tax Appeals; requiring bonds for certain specified licenses, and repealing Chapter 619 entitled "Printers and Publishers" Chapter 625, entitled "Towel Supply Companies," Chapter 682 entitled "Peddlers and Hawkers," Chapter 725 entitled "Bowling Alleys," and Chapter 626 entitled "Slot Machines" of the Revised Code of the City of St. Louis, and containing a penalty clause and a severability clause.

Be it ordained by the City of St. Louis, as follows:

Section One. Chapters 619, 625, 626, 682 and 725 of the Revised Code of the City of St. Louis are hereby repealed.

Section 2. Application.—Penalty for false or untrue statement.

The license collector shall prescribe the form of all applications for licenses with the approval of the comptroller, which shall be similar in form to the license form set forth in Section No. 610.060 Revised Code of the City of St. Louis. All applications shall be for licenses fully completed and signed by the applicant prior to issuance of license. Any person, firm, or corporation who shall file an application with a false or untrue statement contained therein, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to the punishment provided in Section 1.100 of the Revised Code of the City of St. Louis, 1960. In addition to the penalties herein provided, no applicant filing a false or untrue application for a license, shall be eligible for a license for a period of one year from the date of filing such

application. All applications for licenses shall contain a statement certifying to the fact that the applicant has paid all personal property taxes, earnings taxes, license taxes, permit and certificate fees due and payable.

Section 3. Payment of personal tax and license tax for preceding year required. No license or permit provided for, or required by this ordinance or any ordinance of the city shall, hereafter be issued by any department, Division or office, thereof to any person until all taxes, personal taxes, earnings taxes, license taxes, permits, certificates and merchants tax due, if any, of such person for the preceding year shall first have been paid.

Section 4. Issuance to two or more persons, etc. A license may be issued to two or more persons engaged in any joint enterprise, the same as to a single person and for the same charge, except where otherwise specially provided.

Section 5. Separate license for each place of business. A separate license shall be obtained for each place of business and under each name such business is conducted, operated, maintained, or carried on by every person engaged in any occupation, calling, trade, or enterprise for which a license is required by the ordinances of the city.

Section 6. Operation of more than one business, occupation or profession from same address. Whenever any applicant for a license is engaged in more than one occupation or business at the same address, such applicant may, at his option, in lieu of making and paying for separate individual licenses for each avocation, profession, occupation or business, make application and pay for one license for all avocations, professions, occupations or business conducted by the applicant at such location, provided the license fee for all such occupations or businesses required by this ordinance is computed on an

annual gross receipts, fees, charges, compensations or commissions bases; provided that the not less than minimum license fee for each such avocation, profession, occupation or business shall be paid at the rate prescribed in this ordinance; provided further that this section shall apply only to those avocations, professions, occupations and businesses where the license fee is computed on gross annual receipts, fees, charges, compensations or commissions of such occupation or business if a separate license were issued for each such avocation, profession, trade, occupation or business. The license issued in accordance with this section shall specifically enumerate each avocation, business, profession or occupation for which issued. If each business avocation, profession, trade or occupation is conducted in a separate name, separate license shall be secured for each name under which a business or occupation is conducted.

Section 7. All Licenses provided for in this ordinance, whether based on annual gross receipts fees, charges, compensations or commissions, or upon a yearly license fee, shall expire on June 30 of each year unless otherwise provided herein. Any person, firm, or corporation commencing any new business or new occupation after the 1st day of July each year shall secure a license for the balance of time remaining in such year. The license year for the purpose of this ordinance shall be July 1 each year and ending at midnight the following June 30.

The license fee for any avocation, profession, trade, business or occupation commencing after July 1 each year shall be as follows:

1. All businesses or occupations commencing on July 1 up to and including midnight December 31 of each year shall be 100% of the minimum license fee set forth in the applicable section of the tax fee schedule for such business or occupation.

2. All businesses or occupations commencing on January 1, each year up to and including midnight June 30 of each year shall be 50% of the minimum license fee set forth in the applicable section of the tax free schedule for such business or occupation.

No provisions of this section except for the date of expiration on June 30 of each year shall apply to any license provisions found in this ordinance which specifically provide that the license may be issued by the day, month, or week, and any license section in this ordinance specifically providing for a license fee per day, week or month shall not be prorated.

Section 8. No license to issue until fee is paid. The license collector shall not issue any license specified herein until the party applying for the same shall have paid the license collector the sum of money charged therefor by this ordinance.

Section 9. Delay in payment. Whenever any license tax, as fixed by this ordinance, shall have remained unpaid for sixty days after the time at which the same was due, the amount of said license tax thereafter payable shall be twenty per cent greater than the amount of said tax as fixed in appropriate section of this article; provided, that this section shall not be deemed a waiver of the right of any court to impose a penalty for the violation of the ordinance of the city respecting the time when any license tax is due.

Section 10. Extension of time of payment. The license collector may, before any delinquency and for good cause shown, extend the time of payment for a period not to exceed thirty days.

Section 11. License Collector's Receipts. The license collector shall, upon payment to him of the charge of any

license, as provided by the ordinance, give a receipt, stating the amount paid, the nature of the license, its duration and to whom issued. A copy of all such receipts shall be delivered by the license collector to the comptroller. At the time payment is received, the license collector shall at once issue and deliver to the proper party the license desired, provided the applicants possess all the qualifications required as a prerequisite for the issuance of such licenses.

Section 12. Same—preservation of copies by comptroller. The Comptroller shall preserve copies of receipts given to the license collector for charges paid for licenses, and shall immediately charge the treasurer with the amount of such receipts.

License collector shall transmit all license fees received to the treasurer.

Section 13. Record of license issued. The license collector shall keep a book of records as prescribed by the comptroller containing a complete and perfect record of all licenses issued, showing the nature of the license, the amount paid, its date, expiration, and to whom issued.

Section 14. Display of licenses. All licenses granted hereunder by the city shall be carefully preserved and be displayed in a conspicuous place in the places of business authorized to be conducted by said licenses.

Section 15. License fee where no fee specified. Every person conducting any business, industry, or enterprise for which no license is specified in this ordinance or in any other section of the Revised Code of the City of St. Louis, or ordinances of the City of St. Louis shall procure a license therefor from the city and shall pay the same license fee as for the nearest related business, industry, or enterprise as determined by the license collector.

Section 16. Doing business without a license—false statements in application. Any person who engages in any business, occupation, pursuit, profession, or trade, or in keeping or maintaining any institution, establishment, article, utility or commodity as enumerated herein without first procuring and paying for a license so to do, unless otherwise exempted by law, or who knowingly makes a false statement in his application for an occupation license as to his annual gross receipts, fees, charges, compensations or commissions, or as to other conditions or factors upon which the license fee is or shall be based, shall be deemed guilty of a misdemeanor, and upon the conviction thereof shall be subject to the penalties prescribed by Section 1.100, Revised Code of the City of St. Louis, 1960.

Section 17. Inclusion in application of Annual gross receipts, commissions, fees, charges or compensation for preceding year—right to verify applicant's gross receipts, commissions, fees, charges or compensation. Each applicant for an occupation license, in all cases where the fee or tax for such license is, or shall be, based on "annual gross receipts", or "Annual Gross fees, charges, compensation or commissions" shall include in his or its application a sworn statement of the true amount of the gross annual receipts, fees, charges, compensations or commissions of his or its profession, avocation, trade, business or occupation for the preceding license year, using the basis for such computation the same figures shown by his or its books and records, by his or its federal and state income tax returns, or by any other records or copies thereof, which truly, correctly and accurately show such annual gross receipts, fees, charges, compensation and commission of the applicant for such period; and each applicant for such license, in all cases where the fee for such license is or shall be based on conditions or factors other than annual gross receipts or "Annual gross fees,

charges, compensations or commissions," shall include in his or its application a true and accurate statement of such conditions or factors upon which such statement is or shall be based.

For the purpose of verifying the accuracy and truthfulness of statements included within any application for a license, when such license is based upon annual gross receipts, or annual gross fees, charges, compensations or commissions, the City of St. Louis, acting through the license collector, comptroller, or any authorized deputy or agent of either, shall have the right at all reasonable times during the regular business hours to audit or examine the Books and records of the applicant or licensee for the purpose of determining the truthfulness and accuracy of any statements made by the applicant or licensee in an application for a current years or preceding years license. All applications accepted by the license collector shall be accepted subject to audit and verification. No License shall be issued to any applicant so long as any applicant refuses to permit such an audit or examination to be made on current or on all prior years licenses. Any person, firm or corporation who shall refuse to permit the license collector or their representatives the right to audit or examine their books and records to verify the accuracy of the application of any license heretofore issued shall forfeit said license. Should any licensee refuse to permit the license collector or Comptroller or their respective representative to examine and audit the books and records of said licensee, the license of said licensee shall be revoked forthwith by the License Collector.

Section 18. Sworn statement when fee based on receipts —temporary license. Every person for whom a license is required herein, the amount of which license is to be computed upon the annual gross receipts, fees, charges,

compensations or commissions, of such person, shall furnish the city with a correct statement in writing, subscribed and sworn to before a notary public or license collector, showing the amount of such gross annual receipts, fees, charges, compensations, or commissions received during the preceding tax year, which statement shall not be made public or used by the city or any officer thereof, except for the purpose of establishing a correct bases for fixing and collecting the amount of the license tax herein provided. All books of account showing the amount of such annual gross receipts shall be open to the inspection of the city officials charged with the duty of issuing the license herein provided and collecting the same.

Section 19. New Business—Minimum Fee—Every such person before commencing any business, trade, profession, occupation as herein enumerated shall first procure a license and pay therefore the minimum amout applicable to business, pursuit, occupation or profession, unless otherwise provided by this ordinance, and at the next succeeding July 1 shall obtain such new license to be determined from the annual gross receipts, fees, charges, compensations or commissions, as herein provided.

Section 20.—Term "$1.75 per $1000"—The term "$1.75 per $1000" or other similar terms, as used in any section of this ordinance, shall be construed to mean that the license fee or tax thereon referred to shall be so computed upon the amount of the "annual gross receipts" "annual commission, fees, charges or compensation," of the avocation, trade, business, profession or occupation therein referred to, and the total of such computation shall constitute the amount of the license fee or tax per year for such avocation, business, trade, profession or occupation and each license fee or tax shall be due and payable at the time provided in the ordinance, except where a different

method is used for computing and a different time determined in some other section of this ordinance for the payment of license fees or taxes.

Section 21 (a)—"Based on Annual Gross Receipts" shall mean—twelve times the average monthly gross receipts for the time during which any trade, business, profession or occupation in question shall have been conducted, or for the period of one year next preceding the date upon which the required license becomes due, or if past due, and demand is made therefor, then the date of such demand.

Section 21 (b)—"Based on Annual Gross Commissions, Fees, Charges or Compensation" shall mean—

Twelve times the annual average monthly gross commissions, fees, charges or compensation from the business, trade, profession, or occupation in question for the time during which such business shall have been conducted, or for the period of one year next preceding the date upon which the required license becomes due, or if past due and demand is made therefor then the date of such demand.

Section 22. Appeal procedure in any case where a licensee or applicant for a license deems the application or interpretation of this ordinance in a particular case places an undue burden upon interstate commerce or where a licensee or applicant for a license has been aggrieved, by any requirement, decision, order or determination by the license collector or any other Tax Official of the City of St. Louis in the enforcement of the provision of this ordinance, such licensee or applicant may file a petition in writing for review to the Board of Tax Appeals in the office of the License Collector on the form prescribed by the Board. Such petition for review shall be in writing and shall be accompanied by the sum of $15 to cover the cost of such hearing. Such petition shall

set forth in detail the manner in which such license fee constitutes a burden on interstate commerce, or the grounds upon which the applicant or licensee alleges that he is aggrieved by the requirement, decision, order or determination of the license collector.

Section 23. **Board of Tax Appeals, Membership and Terms.** There is hereby established a Board of Tax Appeals consisting of three members who shall be voting and taxpaying residents of the City of St. Louis, and be appointed by the Mayor of the City of St. Louis. Upon enactment of this ordinance, the Mayor shall appoint one member to a one-year term, and one member to a two-year term and one member to a three-year term to commence immediately upon appointment. Upon expiration of the initial term, all subsequent appointments shall be made for a term of three years. The Chairman shall be selected by the Members of the Board of Appeals.

Section 24. **Petitions for Review and Hearings**—The chairman shall call a meeting of the Board of Tax Appeals within ten days after the filing of a proper petition for review by a license applicant or any person alleging to be aggrieved by any decision of the license collector. The Board shall hear all relevant and competent testimony and evidence offered by the petitioner in support of the allegations in the petition, and the Board shall hear all relevant and competent testimony and evidence concerning the matter offered by the license collector, or any other person.

Section 25 (g) **Decisions of the Board**—The Board may find that the applicant's license tax does not place an undue burden on interstate commerce, or that the license applicant has not been aggrieved by the requirement, decision, order of determination of the license collector, and in such cases affirm the decision of the license collector, or the Board may find the license tax places an undue

burden on interstate commerce, or that the license applicant has been aggrieved by the requirement, decision, order or determination of the license collector, and either modify the decision, order, requirement or interpretation of the collector or may reverse the decision, order, requirement or interpretation of the collector, and shall enter its order, determination or decision, which shall become final.

Section 26. The Board is authorized and directed to promulgate rules and regulations governing its proceedings, and is hereby empowered to subpoena persons, books, papers, and records in carrying out of its duties in this ordinance.

Section 27. **Time of Board Decisions.**—The Board shall decide any appeal within ten days after the hearing on appeal. The decision of the Board shall be final, subject to review under the provisions of Chapter 536, Revised Statutes of Missouri, 1959.

Section 28. **Hearings—Continuance.**—The Chairman of the Board, may continue any appeal to a day certain, but, in any event, appeals shall be heard by the Board within sixty days after the filing of the petition for review.

Section 29. **Business, etc., for which license is required.** Every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, engaged in any business, occupation, pursuit, profession, or trade, or in the keeping or maintaining of any institution, establishment, article, utility, or commodity, in this ordinance, shall procure and pay for a license therefor from the city, and such license fees shall be in the respective amounts set out in this ordinance (except as otherwise provided in this ordinance).

Whenever in this ordinance and in the succeeding sections of this schedule the terms "Based on Annual Gross Receipts" or "Based on Annual Gross Commission fees, charges, or compensation," are used in this ordinance, the license tax fee for businesses, avocations, professions, trades, or occupations, except as otherwise specifically provided in this ordinance, shall be determined by multiplying the number of thousands of dollars or fractions thereof of "Annual Gross Receipts" or "Annual Gross Commissions, fees, charges or compensation" by the rate of $1.75.

Example.

Firm "A" with "annual gross receipts" or "annual gross commission, fees, charges or compensation" of $100,250 will pay $1.75 per $1,000 or $176.75 ($100,250÷$1,000×$1.75).

Section 29-1. Abstracting, certifying or guaranteeing of land titles business.

Based on annual gross receipts: minimum per year $12.50

Section 29-2. Accountants.

Based on annual gross receipts: minimum per year $12.50

Section 29-3. Advertising advisers, composers, or writers.

Based on annual gross receipts: minimum per year $12.50

Section 29-4. Advertising business.

Advertising business is hereby defined as any person, firm or corporation engaged in or carrying on the business of advertising, soliciting, advertisements, or the preparation of advertisements or sale of advertisements, for any magazine, newspaper or other publication, radio station, television station, or other advertising media for hire or compensation directly or indirectly.

A concern consisting of no more than one person the annual license fee shall be $32.00 per year.

For each additional person engaged in the advertising business either as a partner, officer or employee the annual license fee shall be increased the sum of $5.00 for each such employee, partner or officer.

Section 29-4 (a). Advertising business (outdoor).

Based on annual gross receipts; minimum $12.50

Section 29-5. Public Adjustors.

Gross Annual Commissions Fees, Charges, or Compensation	License Tax per year
Less than $5,000	$ 5.00
$5,000 and not more than $10,000	10.00
$10,000 and not more than $15,000	15.00
$15,000 and not more than $20,000	20.00
$20,000 and not more than $25,000	25.00
$25,000 and not more than $30,000	30.00
$30,000 and not more than $50,000	50.00
$50,000 and not more than $75,000	75.00
$75,000 and not more than $100,000	100.00
$100,000 and not more than $150,000	150.00
Over $150,000	200.00

Section 29-6. Aerial survey business.

Based on annual gross receipts; minimum per year $12.50

Section 29-7. Ambulance service business.

Operated independently or in connection with an institution, firm, corporation, or association Annual license fee to engage in such occupation or business shall be, for each vehicle used in such occupation or business..$50.00

No person, firm or corporation shall engage in the business of operating an ambulance service company without first obtaining a license so to do from the license collector.

Section 29-8. Amusement Park.

Based on annual gross receipts; minimum per year $12.50

Section 29-9. Transient Amusement Park includes carnivals.

License fee of $5.00 per ride per week.

Section 29-10. Appraisers of real estate or personal property.

Based on annual gross receipts: minimum per year $12.50

Section 29-11. Armature rewinding business.

Based on annual gross receipts; minimum per year $12.50

Section 29-12. Addressing business.

Based on annual gross receipts; minimum per year $12.50

Section 29-13. Air conditioner business—installation, rebuilding, leasing, rental of or repair of.

Based on annual gross receipts; minimum per year $12.50

Section 29-14. Air Transportation Ticket Sales Business, Brokers and Agents.

Annual License Fee $100.00

Section 29-15. Asphalt and concrete paving contractors.

Based on annual gross receipts; minimum per year $12.50

Section 29-16. Automobile, truck and automotive vehicle washing business.

When not conducted in connection with a garage or service station and not at the same location with the garage or service station. Based on annual gross receipts; minimum per year.....$12.50

Section 29-17. Assayers.

Annual license fee per person engaged in such business $12.50

Section 29-18. Awnings and tent business—rental, repair, maintenance and installation of.

Based on annual gross receipts; minimum per year $12.50

Section 29-19. Automotive trade school.

Based on annual gross receipts; minimum per year $12.50

Section 29-20. Automobile, truck, and automotive vehicles repair garage business.

Based on annual gross receipts; minimum per year $12.50

Section 29-21. Automobile, truck, trailer—rental or leasing business.

Based on annual gross receipts; minimum per year $12.50

Section 29-22. Automobile, truck driver—instruction business.

Based on annual gross receipts; minimum per year $12.50

Section 29-23. Professional bail bondsmen and agents.

License fee for professional bondsmen for each calendar year or fraction thereof $200.00

License fee for each agent or employee of a professional bondsman who posts or executes bonds in the name of a professional bondsman, for calendar year or fraction thereof $50.00

Section 29-24. Bowling Alley Pinsetters and Pinspotters business—leasing or rental of.

Based on annual gross receipts; minimum per year $12.50

Section 29-24. (a). Bowling Alleys.

Based on annual gross receipts: minimum per year $12.50

Section 29-25. Beauty shops.

Based on annual gross receipts; minimum per year $12.50

Section 29-26. Blue Printing, photostating, photographic and film developing and finishing, photocopying, duplication of all types, business.

Based on annual gross receipts; minimum per year $12.50

Section 29-27. Boiler, furnace, or heating system installation, repair, cleaning, maintenance, inspection, includes stokers, oil, gas, coal, or electrical heating systems business, or chimney cleaning business.

Based on annual gross receipts; minimum per year $12.50

Section 29-28. Security stock and bond brokers, security, stock and bond brokerage firms.—Shall mean any person, firm or corporation who, purchases, buys, sells, or barters on his own or on the account of others, any stocks, bonds or securities of any corporation, public or private.

Based on annual gross commissions, fees, charges and compensation; minimum per year.....$12.50

Section 29-29. Bicycle, motor scooter, and motorcycle, business—repair, maintenance, rental or leasing of.

Based on annual gross receipts; minimum per year $12.50

Section 29-30. Boat, ship watercraft repair—rental, maintenance, or mooring business.

Annual license fee $12.50

Section 29-31: Bonding and Surety Companies, other than Professional Bail Bondsman as herein defined.

Based on annual gross commissions, fees, charges or compensations; minimum per year.....$12.50

Section 29-32. Bookbinding business.

Based on annual gross receipts; minimum per year $12.50

Section 29-33. Bookkeeping business.

Based on annual gross fees, charges, and compensation; minimum per year $12.50

Section 29-34. Bottle exchange business.

Based on annual gross receipts; minimum per year $12.50

Section 29-35. Contractors.—The term "Contractor" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, and corporation, including any and all building crafts and enterprises which shall engage in the business of building, erecting, repairing, remodeling or otherwise constructing or reconstructing houses, buildings, or other structures or any parts thereof, and including excavating and grading of every type or kind, or contract with others for the performance of any such work, or the erection and installation of windows, storm windows, siding, roofing, awning or building materials of any type whatsoever within the City of St. Louis.

No contractor, as the term is herein defined, shall engage in, carry on, or conduct a business for the perform-

ance of such work without first having obtained a license so to do from the License Collector.

No building permits shall be issued by the Building Commissioner to any contractor for the construction or erection, or remodeling of any building, house or other structure or for any parts thereof unless such contractor has obtained a license as herein provided, and has paid the license fee as herein provided.

The license fee as herein provided shall be based upon the gross annual business done or performed by any such contractor within the corporate limits of the City of St. Louis during the period of twelve (12) months past before the payment of the license, provided that such contractor has been engaged in such business during such period. For the purpose of this section the "Gross Annual Business" shall be taken to mean 12 times the average monthly business done within the City of St. Louis for the time during which any contractor shall have engaged in such business or for a period of one year next preceding the date upon which the required license becomes due. The license for a contractor shall be due and payable on the first day of July each year and shall expire on the 30th day of June of the following year.

No building permit or any other type of permit shall be issued by the Building Division or any other official of the City of St. Louis for the erection, construction, repair, remodeling of any building fixture, structure, driveway, alley, sidewalk, excavation or any part or portion thereof unless such contractor has procured a license as herein provided.

The tax shall be levied at the rate of $1.75 per $1,000 or fraction thereof on the gross annual business done or transacted within the City of St. Louis, with a minimum license fee of $15 per year.

Section 29-36. Building window or building cleaning business, both interior and exterior of buildings.

Based on annual gross receipts; minimum per year $12.50

Section 29-37. Building, management, operation, and maintenance business.

Based on annual gross commissions, charges and fees; minimum per year.....$12.50

Section 29-38. Building or house moving, raising, shoring, wrecking business.

Based on annual gross receipts; minimum per year $12.50

Section 29-39. Building and construction reporting business.

Based on annual gross receipts; minimum per year $12.50

Section 29-40. Business brokers.

Based on annual gross commissions, fees, charges or compensations; minimum per year.....$12.50

Section 29-41. Buyers agents and agencies.

Based on annual gross receipts; minimum per year $12.50

Section 29-42. Business machines, equipment and office furniture business; repair, installation, maintenance, leasing or rental (including calculating, computing, and tabulating machines of all kinds and descriptions).

Based on annual gross receipts; minimum per year $12.50

Section 29-43. Camera and photographic equipment business;—repair, installation, and maintenance thereof.

Based on annual gross receipts; minimum per year $12.50

Section 29-44. Carpet or rug cleaner business.

Based on annual gross receipts; minimum per year $12.50

Section 29-45. Carpenter contractors.

See contractors, Section 29-3[illegible].

Section 29-46. Caterers or catering business.

Based on annual gross receipts; minimum per year $12.50

Section 29-47. Cement or concrete contractors.

See contractors.

Section 29-48. Chair, table or other personal property renting business.

Based on annual gross receipts; minimum per year $12.50

Section 29-49. Charity solicitation business including advisers, and consultants.

Annual license fee per company, firm or partnership, or person engaged in such business $500.00

Section 29-50. Check cashing business.

Based on annual gross receipts; minimum per year $12.50

Section 29-51. Chemists.

Based on annual gross receipts; minimum per year $12.50

Section 29-52. Children's nurseries or day schools not operated by a charitable institution.

Annual license fee on each nursery or day school..$12.50

Section 29-53. Chiropodist.

Annual license fee upon every person engaged in the practice of the aforementioned.....$25.00

Section 29-53 (1). Chiropractors.

Annual license fee upon every person engaged in the practice of the aforementioned.....$25.00

Section 29-54. Definition—Claim agents.

Any person, firm, or corporation other than an Attorney at Law, or any adjuster as herein defined, who handles claims on the accounts of others for compensation.

Annual license fee upon every person engaged in the business $35.00

Section 29-55. Clearing Houses.

Based on annual gross commissions, charges, fees, and compensations received; minimum per year $500.00

Section 29-56. Clinics, other than those operated by charitable institutions.

Based on annual gross receipts; minimum per year $12.50

Section 29-57. Clothing or costume rental.

Based on annual gross receipts; minimum per year $12.50

Section 29-58. Coin operated amusement devices.

Including but not limited to coin operated phonograph, juke boxes, pin ball machines, coin operated radios or television sets, or any other coin operated amusement devices. Annual license fee per machine device $30.00

Upon payment of the annual license tax as herein provided, the License Collector shall issue a license sticker emblem, which shall bear the words "Coin operated amusement device," and the numerals designating the year for which the license is issued and a number identical with the number of such license. One side of the license shall be of such strength and composition that the emblem cannot be removed from the coin operated amuse-